IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17870 of 2003
SPECIAL CIVIL APPLICATION NO 17871 OF 2003
SPECIAL CIVIL APPLICATION NO 17872 OF 2003
SPECIAL CIVIL APPLICATION NO 17873 OF 2003
SPECIAL CIVIL APPLICATION NO 17874 OF 2003
SPECIAL CIVIL APPLICATION NO 17875 OF 2003
AND
SPECIAL CIVIL APPLICATIONNo 17876 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTILAL D MISTRY

Versus

DAHYABHAI BHAGVANJI LAD

Appearance:

1. Special Civil Application No. 17870 of 2003
MR AK CLERK for Petitioner No. 1
MR DHIRAJLAL V JOSHI for Respondent No. 1
MR DIPAK R DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

COMMON ORAL JUDGEMENT

1.1 In this group of petitions the petitioner is challenging the order of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 17th September 2003 in respective Gratuity Application filed by the respondent, whereby the petitioner is directed to pay the amount of gratuity in favour of respondent workman from 31st January 2001 along with simple interest at 10 % per annum.

1.2 Against the said order the petitioner preferred appeal which came to be dismissed by order dated 27th October 2003 on the ground that the the petitioner has not deposited the amount as ordered by the Competent Authority, therefore the appeal cannot be entertained.

2.1 It is contended by Mr. A.K. Clerk, learned advocate for the petitioner that the petitioner company is getting their job work done outside. The respondent filed application under the Payment of Gratuity Act. In the said application petitioner filed written statement also raising preliminary issue by giving a separate application that the Payment of Gratuity Act is not applicable to the petitioner firm since the petitioner firm had not employed ten or more persons at any point of time. It is further submitted that the petitioner had also filed written argument. Inspite of that the Controlling Authority had ordered for payment of gratuity. In the same way the appellate authority had also dismissed the appeal of the petitioner.

2.2 Mr. Dipak Dave for the respondent has contended that on the basis of the documents which were produced before the competent authority, the authority had decided the matter on merits without deciding the preliminary issue. It is not in dispute that the application dated 3rd February 2003 (Annexure-C) tendered by the petitioner for deciding the preliminary issue is not adjudicated by the authority. Therefore, the preliminary issue regarding whether the original employer namely M/s. Kantilal D. Mistry had engaged more than ten employees or not is not required to be considered by the competent authority after allowing both the sides to adduce evidence on record.

3.1 At this moment, I am not entering into merits of the matter, in view of the fact that, any finding by this Court will affect the case of either of the side and

therefore, the matter is remanded back to the controlling authority with a direction to the controlling authority to decide the application dated 3rd February 2003 (Annexure-C) within two months from the date of receipt of writ of this order, and to decide whether the establishment was covered under the Payment of Gratuity Act or not. If preliminary issue decided by the controlling authority is against the petitioner, then the matter shall be heard on merits. With the above directions impugned order of both the authorities are quashed and set aside.

3.2 In the meantime, till the proceedings are heard and decided by the controlling authority, the petitioner shall not transfer any of the immovable properties which are in the name of the petitioner firm, so as to see that the interest of the workman in each of the petition is protected.

3.3 If the authority is of the opinion that originally the establishment was covered under the Act then the authority will also hear the parties on merits. With the aforesaid directions, petitions are allowed. Rule made absolute to the aforesaid extent in each petition. No order as to costs.

4.1 Office to place a copy of this judgment in each petition.

Dt: 8-7-2004 (K.S. Jhaveri, J)

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